IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

WP(C).No. 28795 of 2007(C)

PETITIONER:

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1. SUKUMARAN KOCHUVEETIL,
KOCHUVEETIL HOUSE, CHANDANAKKAMPARA,
PAYYAVOOR, KANNUR.

2. THOMAS KUTTIKKAL,
KUTTIKKAL HOUSE, CHANDANAKKAMPARA,
PAYYAVOOR, KANNUR.

3. THOMAS KAITHAKANIRAPPEL,
KAITHAKKANIRAPPEL HOUSE,
CHANDANAKKAMPARA, PAYYAVOOR,
KANNUR.

BY ADV. SRI.P.C.SASIDHARAN
SRI.G.GIREESH KUMAR

RESPONDENTS:

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1. THE DISTRICT COLLECTOR,
KANNUR.

2. THE DEPUTY SUPERINTENDENT OF POLICE,
KANNUR.

3. GEOLOGIST,
MINING AND GEOLOGY DEPARTMENT,
DISTRICT OFFICE, KANNUR.

4. DEPUTY CHIEF CONTROLLER OF EXPLOSIVE,
KAKKANAD, COCHIN.

5. PAYYAVOOR GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
PAYYAVOOR, KANNUR.

6. K.U.JOSEPH, KALAPPURACKAL HOUSE,
PAYYAVOOR, KANNUR DISTRICT.

ADDL.R7

7. THOMAS PARATHANATHU, AGED 41,
S/O JOSEPH, PARATHANATHU HOUSE,
PAYYANNOOR POST, KANNUR DISTRICT
(Impleaded as per order dated 12.11.2007 in I.A.14474/2007)

BY ADV. SRI.GEORGE THOMAS (MEVADA)
SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
GOVERNMENT PLEADER ANU SIVARAMAN FOR R1 TO R4

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1- TRUE COPY OF THE INFORMATION RECEIVED FROM THE PANCHAYATH

EXT.P2- TRUE COPY OF the REPORT OF THE CIRCLE INSPECTOR OF POLICE

EXT.P3- TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER DATED 19.7.07

EXT.P4- TRUE COPIES OF THE NEWS ITEM APPEARED IN VARIOUS DAILIES.

EXT.P5- TRUE COPIES OF THEPHOTOGRAPHS EVIDENCING THE DAMAGES CAUSED TO THE NEARBY HOUSES, AND THE LOCALITY.

(TRUE COPY)

P.A TO JUDGE

THOTTATHIL B. RADHAKRISHNAN, J

W.P.(C). 28795/2007

Dated this the 12th day of November, 2007

JUDGMENT

The petitioners are local residents in the locality where the sixth respondent is carrying on mining activity, within the limits of the fifth respondent, Panchayat. Sixth respondent is also stated to be involved in metal crushing.

2. Sixth respondent, on the strength of the materials placed by him, contends that he has all the necessary licences. He however contends that on the basis of an application made under the Panchayat Raj Act, if no order of rejection is made within the statutory period, he is entitled to state that he has a deemed licence.

3. The learned counsel for the petitioners points out that the third respondent, Geologist, has filed an affidavit stating that no licence has been issued to the sixth respondent for mining. That affidavit needs to be read in detail to conclude finally in that regard.

4. The aforesaid would show that the short issue that arises for decision as to whether the sixth respondent has all the necessary licence in terms of the relevant laws are still further way. Even if he has the licence, activities are carried in terms of the licence and within the premise in relation to the licences are granted. The question of public safety and other issues would also require consideration. The controversy as to whether the sixth respondent has the necessary licences in terms of the laws governing mines, minerals, use of explosives etc., has to be reserved. If explosives are used, it goes without saying that necessary licence under the laws relevant in that regard have also to be obtained.

5. The identification of the property, where the sixth respondent is carrying on the activities, can be easily made by the Tahsildar and the Village Officer, who are authorities who can report regarding such matters, to

the Revenue Divisional Officer. The question as to whether the sixth respondent has all the necessary licences is also a matter that can be verified by the Revenue Divisional Officer. Any controversy as to whether the Geologist has issued licence for the site in question can also be verified by the Revenue Divisional Officer. Any complaint regarding injury to person or property and any sustainable apprehension in that regard are also matters which would fall within the powers of the Revenue Divisional Officer/Executive Magistrate, in terms of the Code of Criminal Procedure and other relevant laws. However, these are not issues which can be agitated for meaningful resolution in exercise of authority and jurisdiction, under Article 226 of the Constitution of India, particularly when there are disputed questions of facts.

6. Under the aforesaid circumstances, this writ petition is closed without entering on merits, relegating the parties to the Revenue Divisional Officer having

jurisdiction over the area, to hear the parties and take a decision regarding the operations of the sixth respondent. Final decision in this regard shall be taken within an outer limit of thirty days after hearing all the necessary parties. Until then the interlocutory order dated 27.9.2007 will continue to apply.

To exclude any delay in the matter, parties are directed to appear before the Revenue Divisional Officer on 20th November, 2007. Revenue Divisional Officer will treat the period fixed for disposal of the proceedings as peremptory.

THOTTATHIL B. RADHAKRISHNAN
Judge

mrcs